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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE J. HORN,

Defendant and Appellant.

D053546

(Super. Ct. No. SCS220131)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy Walsh, Judge. Affirmed as modified.

Lawrence J. Horn entered a negotiated guilty plea to second degree burglary (Pen. Code, § 459). Under the plea bargain, the prosecution agreed to dismiss the remaining charge and allegations in the complaint, including two prior prison term allegations pursuant to Penal Code section 667.5, subdivision (b). The parties stipulated to a three-year prison term to run concurrently with time imposed for a parole violation. The trial

court sentenced Horn in compliance with the plea bargain, choosing the upper term of three years.<sup>1</sup>

The court denied Horn's request for a certificate of probable cause.

### FACTS

Horn admitted he "unlawfully entered a locked vehicle [with] the intent to commit theft."

### DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the trial court abused its discretion by denying Horn's postjudgment request to withdraw his guilty plea; (2) whether the trial court erred when it imposed the upper term for burglary; and (3) whether the delay between Horn's arrest and arraignment was reasonable.

We granted Horn permission to file a brief on his own behalf. He has responded.

Horn claims he received a sentence that was not in accordance with the plea bargain. He is mistaken. The record on appeal shows that the plea bargain called for a stipulated three-year prison term to be run concurrently with the term imposed for the

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<sup>1</sup> The upper term for burglary is three years in prison. (Pen. Code, §§ 18, 461.) The abstract of judgment incorrectly lists the three-year term as the lower term. We shall direct the trial court to amend the abstract of judgment to correctly reflect the upper term was imposed on the burglary count.

parole revocation. The trial court sentenced Horn to three years in prison to be served concurrently with the parole revocation term.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented Horn on this appeal.

#### DISPOSITION

The trial court is instructed to amend the abstract of judgment to reflect that the upper term was imposed for the burglary count and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. (See fn. 1, *ante*.) The judgment as modified is affirmed.

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AARON, J.

WE CONCUR:

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BENKE, Acting P. J.

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NARES, J.